EFiled: Jan 05 2024 04:20PM EST
Filing ID 71746342
Case Number 385,2023

IN THE SUPREME COURT OF THE STATE OF DELAWARE

	)	
	)	No. 385, 2023
	)	
IN RE AMC ENTERTAINMENT HOLDINGS, INC. STOCKHOLDER LITIGATION	)	Court Below:
	)	
	)	Court of Chancery of the State of Delaware,
	)	C.A. No. 2023-0215-MTZ
	)	

ANSWERING BRIEF OF APPELLEES AMC ENTERTAINMENT HOLDINGS, INC., ADAM M. ARON, DENISE CLARK, HOWARD W. KOCH, KATHLEEN M. PAWLUS, KERI PUTNAM, ANTHONY J. SAICH, PHILIP LADER, GARY F. LOCKE, LEE WITTLINGER, AND ADAM J. SUSSMAN

OF COUNSEL:

John A. Neuwirth
Joshua S. Amsel
Matthew S. Connors (#5598)
Tanner S. Stanley
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

Raymond J. DiCamillo (#3188)
Kevin M. Gallagher (#5337)
Matthew W. Murphy (#5938)
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 N. King Street
Wilmington, Delaware 19801
(302) 651-7700

Counsel for Defendants-Below/Appellees AMC Entertainment Holdings, Inc., Adam M. Aron, Denise Clark, Howard W. Koch, Kathleen M. Pawlus, Keri Putnam, Anthony J. Saich, Philip Lader, Gary F. Locke, Lee Wittlinger, and Adam J. Sussman

Dated: January 5, 2024

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases **Page(s)**

Statutes

NATURE OF PROCEEDINGS

Rose Izzo appeals the Court of Chancery's decision approving the settlement of a class action brought by holders of AMC Entertainment Holdings, Inc.'s ("AMC" or "the Company") Class A Common Stock (the "Common Stock"), which sought to enjoin the Company's recapitalization plans to convert AMC Preferred Equity Units ("APEs") into Common Stock (the "Action").

Out of Common Stock in its treasury that it could use to raise equity capital, AMC created the APEs as a means of surviving the unprecedented financial difficulties inflicted on the movie theater industry by the COVID-19 pandemic. Although the APEs were intended to be a "mirror-image" of AMC's Common Stock—with the same economic and voting rights—they traded at a deep discount to the Common Stock. Consequently, AMC was forced to raise equity capital using a significantly discounted security, which was highly dilutive to all of AMC's stockholders. For this reason, the Company's board of directors ("the Board") proposed—and the holders of Common Stock and APEs approved—an amendment to AMC's certificate of incorporation to: (i) increase the Company's authorized shares of Common Stock; and (ii) effectuate a reverse stock split to convert the outstanding APEs into new shares of AMC Common Stock and provide AMC with a significant amount of authorized and unissued Common Stock that it could use to raise equity capital (together, the "Charter Proposals").

In February 2023, a group of AMC stockholders moved to enjoin the Charter Proposals. The parties to the Action agreed to, and the Court of Chancery entered, an order that prevented AMC from effectuating the Charter Proposals (the "Status Quo Order"), pending an April 27, 2023 preliminary injunction hearing. The parties then engaged in expedited discovery. Thereafter, with the aid of former Vice Chancellor Joseph R. Slights III, the parties reached a settlement: in exchange for a release of claims, each record holder of Common Stock as of the "Settlement Class Time" (as defined in the settlement agreement) would receive one additional share of Common Stock for every 7.5 shares of Common Stock they held after giving effect to the reverse stock split (the "Settlement").

On April 27, 2023, the parties submitted the Settlement to the Court of Chancery. Following intense interest by AMC's highly-engaged stockholder base, the Court of Chancery went out of its way to provide AMC stockholders with an opportunity to express their views on the Settlement, including holding a two-day, in-person hearing at which the Court of Chancery heard from several objectors, including Appellant Ms. Izzo.

On July 21, 2023, in a 69-page opinion, the Court of Chancery rejected the Settlement as initially proposed on the ground that it provided that members of the proposed Settlement class (the "Class") would release claims arising out of the Action that they might have as a result of their ownership of APEs (the "APE

Claims"). The next day, the parties re-submitted the Settlement to the Court of Chancery, in identical form, except to exclude the APE Claims from the release (the "Release"). On August 11, 2023, the Court of Chancery, in a 110-page decision, approved the Settlement, and rejected the arguments that Ms. Izzo now renews on appeal.

On appeal, Ms. Izzo argues that "the Court of Chancery erred by:" (i) "approving a settlement releasing claims arising out of tangential facts and future events;" (ii) "approving a settlement without an opt-out;" and (iii) "finding Plaintiffs to be adequate class representatives."[1] Defendants Below–Appellees file this answering brief in response to Ms. Izzo's first and second points, as to which the well-reasoned decision of the Court of Chancery should be affirmed.

First, the Court of Chancery correctly held that the Settlement did not release tangential claims or claims arising out of future events. Ms. Izzo's argument to the contrary is premised on a misreading of the Release's plain text and a misapplication of years of Delaware precedent. Ms. Izzo has not—and cannot—explain why Defendants are not entitled to a standard release of claims that uses language the Delaware courts routinely approve. *See* Argument Point I.

[1] Appellants' Opening Brief, D.I. 13, at 4 (hereinafter, "Op. Br.").

Second, the Court of Chancery correctly certified the Class as a non-opt-out class under Court of Chancery Rules 23(b)(1) and (b)(2). The Action challenged director conduct on behalf of a homogenous class and presented a quintessential case for a non-opt-out class. The Court of Chancery expressly considered and correctly distinguished the two Delaware cases that Ms. Izzo again relies upon on appeal to argue that due process required the Court of Chancery to have provided the members of the Class with a discretionary opt-out right. The Court of Chancery also correctly identified the reasons why an opt-out right would not have been feasible in this Action, including because it would have been impossible to both permit the Company to effectuate the Charter Proposals—which would change the capital structure of the Company—and also permit dissenting Class members to opt out of those proposals. The issue was binary—either the Charter Proposals would be effected and AMC's capital structure would change or the Charter Proposals would not be effected and AMC's capital structure would not change. Tellingly, Ms. Izzo has no response on this point. *See* Argument Point II.

SUMMARY OF ARGUMENT

1. Denied. The Court of Chancery correctly held that the Release comports with Delaware law and "does not release tangential claims" or "apply to future events."[2] Ms. Izzo wrongly contends that "the trial court did not address [Ms.] Izzo's challenges based on this Court's authority that a release cannot extend to claims based on tangential facts."[3] The Court of Chancery not only addressed Ms. Izzo's objection, it flatly rejected it, holding that the Release "does not release tangential claims, and only releases claims based on the identical factual predicate asserted in the complaints."[4] The Court of Chancery also correctly held that the Release does not release claims arising out of future events, explaining that Ms. Izzo's arguments to the contrary constitute a "misinterpret[ation]" of the Release.[5]

2. Denied. The Court of Chancery correctly certified the Settlement Class as a non-opt-out class under Court of Chancery Rules 23(b)(1) and (b)(2).[6] The Action challenged the propriety of director conduct in carrying out corporate

---

[2] *In re AMC Ent. Hldgs., Inc. S'holder Litig.*, 2023 WL5165606, at *21, *42 (Del. Ch. Aug. 11, 2023) (the "August 11 Opinion"); *In re AMC Ent. Hldgs., Inc. S'holder Litig.*, 299 A.3d 501, 534, n.186 (Del. Ch. 2023) (the "July 21 Opinion").

[3] Op. Br. at 4.

[4] August 11 Opinion, 2023 WL 5165606, at *21.

[5] *Id.* at *42; July 21 Opinion, 299 A.3d at 534, n.186.

[6] August 11 Opinion, 2023 WL 5165606, at *1, 11-14.

transactions on behalf of a class with homogenous rights and interests. The Court of Chancery also correctly identified the reasons why an opt-out right would not have been feasible in this Action, including that it would be "impossible" to permit "the Reverse Split and the Conversion to go forward, while excluding certain class members from the consideration and permit[] them to maintain their claims against, and requests to enjoin, the Reverse Split and Conversion."[7]

[7] *Id.* at *14.

STATEMENT OF FACTS

A. The Parties And Objector Izzo

Plaintiffs Anthony Franchi and Allegheny County Employees' Retirement System (together, "Plaintiffs") are holders of AMC Common Stock.[8]

Defendant AMC is a Delaware corporation with its principal offices at One AMC Way, 11500 Ash Street, Leawood, Kansas. AMC is an operator of movie theatres throughout the U.S. and Europe.[9]

Defendant Adam M. Aron is CEO, President, and Chairman of AMC's Board. He has served as CEO, President, and as a director of AMC since 2016, and has served as Chairman since 2021.[10]

Defendant Denise M. Clark has served as a director of AMC since January 2023.[11]

---

[8] A155 (Verified Stockholder Class Action Complaint, *Munoz v. Aron*, C.A. No. 2023-0216-MTZ (Del. Ch. Feb. 20, 2023) (the "Munoz Complaint") (¶ 39); C425 (Verified Class Action Complaint Seeking Declaratory, Injunctive, and Equitable Relief, *In re AMC Ent. Hldgs., Inc. S'holder Litig.*, C.A. No. 2023-0215-MTZ (Del. Ch. Feb. 20, 2023) (the "Allegheny Complaint" and, together with the Munoz Complaint, the "Complaints") (¶ 16).

[9] C425 (¶ 17).

[10] *Id.* (¶ 18); C1003.

[11] C1004.

Defendant Howard W. "Hawk" Koch, Jr. has served as a director of AMC since October 2014.[12]

Defendant Kathleen M. Pawlus has served as a director of AMC since December 2014.[13]

Defendant Keri S. Putnam has served as a director of AMC since January 2023.[14]

Defendant Anthony J. Saich has served as a director of AMC since August 2012.[15]

Defendant Philip Lader has served as a director of AMC since June 2019.[16]

Defendant Gary F. Locke has served as a director of AMC since February 2016.[17]

Defendant Lee E. Wittlinger served as a director of AMC from September 2018 until his resignation in December 2022.[18]

---

[12] C425 (¶ 19).

[13] *Id.* (¶ 20).

[14] C1005.

[15] C425 (¶ 21).

[16] C426 (¶ 22).

[17] *Id.* (¶ 23).

[18] C84, C1000.

Defendant Adam J. Sussman has served as a director of AMC since May 2019 (all defendants collectively, "Defendants").[19]

Non-party Appellant Rose Izzo claims to be a holder of AMC Common Stock and formerly a holder of APEs.[20] She was an objector to the Settlement.

B. AMC Is Gravely Impacted By The COVID-19 Pandemic

"With the onset of the COVID-19 pandemic and concomitant drop in movie theater attendance . . . AMC faced an existential crisis."[21] Indeed, the second quarter of 2020, with "almost no revenues coming in the door," was "the most challenging quarter in the 100-year history of AMC."[22] "By late 2020, numerous hedge funds took widely reported short positions in AMC's stock."[23] AMC was at risk of filing for bankruptcy.[24] Retail investors, however, began purchasing AMC stock, causing AMC's stock price to increase dramatically.[25]

---

[19] C426 (¶ 24).

[20] A464-A465.

[21] A158.

[22] C1.

[23] C417 (¶ 2).

[24] C487.

[25] A158-A159 (¶¶ 54-56).

C. AMC Runs Out Of Common Stock And Creates The APEs

AMC raised cash by selling "nearly all of the shares [of Common Stock] authorized . . . to survive the pandemic."[26] Given the importance of equity raises to AMC's future financial prospects, AMC twice—in May 2021 and July 2021—asked its stockholders to approve an amendment to its charter that would allow it to issue additional shares of Common Stock.[27] Under then-current law, such an amendment required the affirmative vote of a majority of AMC's outstanding Common Stock.[28] Before the two proposals to authorize more Common Stock were withdrawn, the majority of shares that voted had voted in favor of each of the proposals, but an insufficient number of shares were voted to enable AMC to meet the then-applicable voting requirement.[29]

Left without any other way to raise equity capital, on August 4, 2022, AMC announced that it had created the APEs and was declaring a special dividend of one

[26] A159-A160 (¶¶ 59-60).

[27] C153-C156.

[28] *See* 8 *Del. C.* § 242 (Supp. 2014). Section 242 has since been amended, and would now only require the affirmative vote of a majority of the votes cast, not a majority of the outstanding common stock, to approve the Charter Proposals. *See* 8 *Del. C.* § 242(d)(2) (Supp. 2023).

[29] C153-C156.

APE for each share of Common Stock.[30] AMC CEO Adam Aron explained that the APEs "provide[] another avenue for our investors to participate in the ongoing recovery and growth of AMC," and that the creation of the APEs gives AMC "a currency that can be used in the future to strengthen [AMC's] balance sheet," which "dramatically lessens any near-term survival risk for AMC."[31]

AMC provided extensive disclosure on the key features of the APEs on the day their creation was announced, including that:

- "[e]ach AMC [APE] is a depositary share and represents an interest in one one-hundredth (1/100th) of a share of Preferred Stock;"
- "[e]ach AMC [APE] is designed to have the same economic and voting rights as a share of Common Stock;"
- each APE "is automatically convertible into one (1) share of Common Stock;"
- each APE "votes together with the Common Stock;"
- in order to convert APEs to Common Stock, "the Company may seek to obtain the requisite stockholder approval . . . of an amendment to its certificate of incorporation to increase the number of authorized shares of Common Stock," and that APE holders "will be entitled to vote" on such amendment;
- the underlying shares of the Preferred Stock used to form APEs will be deposited with Computershare Inc. ("Computershare"), which will be

[30] C347.

[31] *Id.*

governed by a depositary agreement, dated August 4, 2022 ("the Depositary Agreement"); and

- as per the Depositary Agreement, "[i]n the absence of specific instructions from Holders of [APEs]," Computershare "will vote the Preferred Stock represented by the AMC [APEs] . . . of such Holders proportionately with [the] votes cast pursuant to instructions received from the other" holders of Preferred Stock.[32]

The Company used the APEs to raise equity and "strengthen[] its liquidity position."[33] As of December 31, 2022, AMC had raised approximately $228.8 million of gross proceeds through the sale of 207.7 million APEs via the Company's at-the-market equity distribution program,[34] and, as of February 28, 2023, AMC had "[r]aised $75.1 million through the private sale" of APEs in 2023.[35] On December 22, 2022, AMC entered into an agreement with Antara Capital L.P. ("Antara") for the sale of 166,595,106 APEs, and simultaneously repurchased $100 million in debt from Antara in exchange for a further 91,026,191 APEs, for a total of 257,621,296 APEs sold.[36] The sale to Antara would "improve [AMC's] balance sheet by

[32] C331, C339, C349-C352.

[33] C361.

[34] C511.

[35] C637.

[36] C365.

reducing the principal balance of [AMC's] debt by yet another $100 million through a debt for APE unit exchange."[37]

D. Despite Being A "Mirror-Image" Of Common Stock, APEs Trade At A Significant Discount To Common Stock, So The Board Recommends—And Holders Of Common Stock And APEs Approve—The Charter Proposals

Each APE and each share of Common Stock had equivalent economic interests in AMC, as well as equivalent voting rights.[38] AMC therefore anticipated that they would trade at or around the same price.[39] But instead of trading at the same price as Common Stock, as AMC expected, the APEs traded at a significant discount—a discount that only continued to expand.[40] The trading discount created significant dilution for holders of Common Stock;[41] with respect to raising additional

[37] C370.

[38] C356.

[39] *Id.*

[40] The APEs were listed on the NYSE on August 22, 2022, and they closed at $6.00 per unit that day. C720. At the same time, Common Stock was trading between $9.17 and $10.46. C721. On the first trading day after Plaintiffs brought their case below, February 21, 2023, Common Stock closed at $6.10 and the APEs closed at $2.21, a 64% discount. C722-C723. By April 14, 2023, weeks after the stockholders had voted in favor of converting APEs into Common Stock to close the trading differential, the APEs closed at a 68% discount. C724-C725. By the start of May 2023, when the parties submitted their briefs in support of the Settlement, APEs were trading at a 74% discount. C726-C727.

[41] C378.

capital, the lower the price of the APEs, the higher the quantity that was required to raise the same amount of additional capital. Raising additional capital when the price of APEs was depressed relative to Common Stock resulted in a loss in equity value per share and diluted the Common Stock holders' percentage ownership of AMC.[42] Because of the dilutive effect of this trading discount on all AMC stockholders, AMC asked holders of Common Stock and APEs to approve the Charter Proposals, which would: (i) increase the Company's authorized shares of Common Stock; and (ii) effectuate a reverse stock split to convert the outstanding APEs into new shares of AMC Common Stock, providing AMC with a significant amount of authorized and unissued Common Stock that it could use to raise equity capital.[43] On March 14, 2023, holders of Common Stock and APEs voted in favor of the Charter Proposals.[44]

[42] *Id.*

[43] C399, C403.

[44] C661-C662. The proposal to increase authorized shares received support from approximately 72.49% of voted shares of Common Stock and 90.99% of voted APEs, and the proposal to effect a reverse stock split received support from approximately 70.39% of voted shares of Common Stock and 90.64% of voted APEs. *Id.*

E. Plaintiffs File Suit And The Parties Reach A Settlement After Expedited Litigation

On February 20, 2023, Plaintiffs Franchi and Allegheny and former Plaintiff Usbaldo Munoz filed complaints challenging the Board's actions.[45] These actions were ultimately consolidated into the Action.[46]

On February 27, 2023, the Court of Chancery entered a Status Quo Order in the Action, which allowed the Company to hold a special meeting on the Charter Proposals, but prevented it from effectuating the results of the vote on the Charter Proposals pending an April 27, 2023 preliminary injunction hearing.[47]

The parties immediately commenced expedited discovery, which included Defendants' production of over 56,000 pages of documents, Plaintiffs issuing subpoenas to four third parties, Plaintiffs' production of 3,700 pages of documents, and preparation for the depositions of six AMC witnesses and Plaintiffs Franchi and Allegheny and then-Plaintiff Munoz in an eight-day window.[48]

[45] A142, C416.

[46] A311.

[47] C458-C461.

[48] A311-A312.

Thereafter, the parties retained former Vice Chancellor Slights as a mediator.[49] On April 2, 2023, the parties executed a term sheet reflecting an agreement-in-principle to settle the Action.[50] The Court of Chancery denied Plaintiffs' April 3, 2023 unopposed motion to lift the Status Quo Order, which would have allowed AMC to effectuate the Charter Proposals immediately.[51]

On April 27, 2023, the parties submitted a settlement stipulation for the Court of Chancery's consideration.[52] In exchange for a release of claims belonging to both Common Stock and APEs, the Settlement would lift the Status Quo Order and permit AMC to effectuate the Charter Proposals, whereupon AMC would issue one share of AMC Common Stock to each AMC stockholder for every 7.5 shares of Common Stock they owned (the "Settlement Consideration").[53]

F. The Court Of Chancery Oversees Unprecedented Settlement Proceedings

On May 1, 2023, the Court of Chancery scheduled a two-day, in person settlement hearing to take place on June 29 and 30, 2023 (the "Settlement

[49] A313.

[50] July 21 Opinion, 299 A.3d at 517.

[51] C664.

[52] A196.

[53] A208-A210; A212-A215.

Hearing.").[54] The Settlement had already started to attract intense interest from AMC's highly engaged stockholder base.[55] In light of this prolific stockholder engagement, the Court of Chancery endeavored to provide all stockholders an opportunity to voice their support or opposition to the Settlement, and designed robust procedural safeguards to ensure stockholders would be heard. The Court of Chancery:

- appointed Corinne Elise Amato as Special Master to "review[] any and all stockholder motions to intervene, as well as any oppositions and replies thereto, and mak[e] recommendations as to whether they should be granted," to review "all timely and properly submitted stockholder objections and letters in support to the proposed settlement that post-date the stockholder notice of the proposed settlement in this action," and to "provide the Court with . . . the Special Master's recommendations as to how the Submissions should inform the Court's decision to approve or deny the proposed settlement;"[56]

- addressed a letter to all interested stockholders, describing the steps stockholders must take to object to the Settlement;[57]

- required that the stipulation memorializing the Settlement, the parties' settlement briefs, and the Special Master's and the Court of Chancery's decisions pertaining to the Settlement all be posted on the Company's and Plaintiffs' counsel's websites;[58]

[54] C686.

[55] A15-A34

[56] C672.

[57] C670-C671; C716-C718.

[58] C719.

- mandated that the Company provide postcard notice of the Settlement to the record and beneficial owners of Common Stock;[59]

- required Defendants to provide further notice of the Settlement by (i) filing the Settlement stipulation and exhibits with the U.S. Securities and Exchange Commission in a Form 8-K; (ii) posting notice electronically on AMC's investor relations website and Twitter account; and (iii) providing notice of the Settlement over *PR Newswire*;[60]

- granted objecting stockholders access to the entire discovery record in the Action, on the condition that they provide proof of ownership of Common Stock and sign a confidentiality agreement providing, among other things, that he, she, or it would not trade on or disclose any confidential information;[61]

- reviewed and resolved extensive docket activity from AMC stockholders, who filed a wide-range of motions, letters, affidavits, and other various filings concerning the Settlement;[62] and

- held the two-day Settlement Hearing, which was designed to ensure AMC stockholders could address the court, complete with an over-flow room for interested stockholders to observe the proceedings.[63]

Leading up to the Settlement Hearing, approximately 2,850 purported AMC stockholders submitted more than 3,500 communications to the Court of Chancery,

[59] C676-C682.

[60] C688-C689.

[61] C728-C731.

[62] July 21 Opinion, 299 A.3d at 518.

[63] *Id.* at 519-20.

many of which were styled as objections, and many of which expressed support for the Settlement.[64]

On May 31, 2023, Ms. Izzo submitted an objection to the Settlement.[65] Ms. Izzo's wide-ranging submission included arguments that the Settlement's release of claims was impermissibly broad because it "encompasse[d] claims based on tangential facts" and claims "that could arise based on a future event," and that "due process concerns" required that the Class be afforded a right to opt-out of the Settlement.[66]

On June 21, 2023, the Special Master issued her Report and Recommendation Regarding Objections to the Settlement (the "Report and Recommendation").[67] The Special Master found that the Settlement Consideration was a valuable "get" that would "benefit the Class," and recommended that the Court of Chancery deny all objections to Settlement, including all of Ms. Izzo's objections.[68]

---

[64] *Id.* at 507; C770, C789.

[65] A440.

[66] A476-80, A484, A487.

[67] C764.

[68] C790, C806, C830, C853.

On June 29 and 30, 2023, the Court of Chancery held the Settlement Hearing.[69] Ms. Izzo was allocated meaningful time to address the court and advance her objections. On July 21, 2023, the Court of Chancery declined to approve the Settlement on a single ground not raised by any objector, including Ms. Izzo.[70] The Settlement originally provided that Class members would release any APE Claims that they might have, but the Court of Chancery held that such claims "[a]re appurtenant to a different security than [C]ommon [S]tock," and that "[t]he class of common stockholders cannot release the APE Claims."[71] The next day, the parties re-submitted the Settlement with a revised release of claims that did not include the APE Claims.[72]

On July 24, 2023, Ms. Izzo informed the Court of Chancery that she was prepared to file a motion for a stay pending appeal should the Court of Chancery approve the Settlement.[73] Plaintiffs and Defendants opposed, and Ms. Izzo's request

[69] C876.

[70] July 21 Opinion, 299 A.3d at 534.

[71] *Id.* at 530.

[72] C855-C858.

[73] C859-C874.

for a stay was fully briefed prior to the Court of Chancery's decision approving the Settlement.[74]

On August 11, 2023, the Court of Chancery approved the Settlement, holding that the Settlement was "reasonable" and "notice was adequate," certified the Class "under Rules 23(a), 23(b)(1), and 23(b)(2)," held that "an opt out right [was] not warranted," and lifted the Status Quo Order.[75] The Court of Chancery rejected Ms. Izzo's objections to the Settlement, including those related to the scope of the Release and the lack of opt-out rights for Class members.[76] The Court of Chancery also denied Ms. Izzo's motion for a stay pending her planned appeal, noting that any such appeal would "raise[] only an ordinary question of contract interpretation," and that Ms. Izzo failed to demonstrate a sufficient "likelihood of success" on appeal.[77] The Court of Chancery also held that the granting of a stay would have inflicted "substantial harm" on AMC and its stockholders.[78]

---

[74] August 11 Opinion, 2023 WL 5165606, at *41.

[75] *Id.* at *1-4.

[76] *Id.* at *13-14, *21, *42, n.381.

[77] *Id.* at *42, *44.

[78] *Id.* at *44.

G. Ms. Izzo Unsuccessfully Seeks To Reinstate The Status Quo Order, AMC Effectuates The Charter Proposals, And Ms. Izzo Files This Appeal

Before the market opened on August 14, 2023—the next business day following the Court's approval of the Settlement and lifting of the Status Quo Order—AMC announced that the reverse stock split of Common Stock would occur on August 24, 2023, the conversion of APEs into Common Stock would occur on August 25, 2023, and the Settlement Consideration would be issued on August 28, 2023.[79] The next day, Ms. Izzo filed an application for interlocutory appeal in the Court of Chancery.[80]

On August 16, 2023, Ms. Izzo filed a notice of interlocutory appeal and motion for a status quo order pending appeal in this Court.[81] On August 21, 2023, this Court denied Ms. Izzo's motion.[82] The same day, Ms. Izzo withdrew her interlocutory appeal in the Court of Chancery.[83]

[79] C888-C896.

[80] C897-C909.

[81] C910-C920.

[82] C924.

[83] C924-C925.

AMC proceeded to effectuate the Charter Proposals. On August 24, 2023, AMC executed the reverse stock split.[84] On August 25, 2023, AMC converted outstanding APEs to Common Stock.[85] On August 28, 2023, AMC issued the Settlement Consideration.[86]

On December 1, 2023, Ms. Izzo filed this appeal.

[84] C935.

[85] *Id.*

[86] C983.

ARGUMENT

I. THE COURT OF CHANCERY CORRECTLY HELD THAT THE SCOPE OF THE RELEASE COMPORTS WITH DELAWARE LAW

A. Question Presented

Did the Court of Chancery correctly hold that the Release comports with Delaware law and "does not release tangential claims" or "apply to future events?"[87] This question was presented below at A413-A412, A476-A480, A586-A593; and C755-C760.

B. Standard Of Review

A contention that the scope of a settlement release is "impermissibly overbroad" is reviewed *de novo*.[88]

C. Merits Of The Argument

1. The Release Only Covers Claims That Are Based On The Operative Facts In The Action

Ms. Izzo wrongly contends that "none of the multiple opinions in this case ever addressed Izzo's objection" that "a release cannot extend to claims based on tangential facts."[89] The Court of Chancery not only addressed Ms. Izzo's objection, it flatly rejected it, holding that the Release "does not release tangential claims," and

[87] August 11 Opinion, 2023 WL 5165606, at *21, *42, *44; *see also* July 21 Opinion, 299 A.3d at 534, n.186.

[88] *In re Phila. Stock Exch., Inc.*, 945 A.2d 1123, 1145 (Del. 2008).

[89] Op. Br. at 21-22.

"only releases claims based on the identical factual predicate asserted in the [C]omplaints."[90] Dissatisfied with the Court of Chancery's conclusion, Ms. Izzo now rehashes the same arguments she raised below.[91] But she yet again fails to explain why Defendants are not entitled to a release that is typical of those routinely granted by the Delaware courts in stockholder class actions.

The Release applies to:

> any and all actions, causes of action, suits, liabilities, claims, rights of action, debts, sums of money, covenants, contracts, controversies, agreements, promises, damages, contributions, indemnities, and demands of every nature and description, whether or not currently asserted, whether known claims or Unknown Claims, suspected, existing, or discoverable, whether arising under federal, state, common, or foreign law, and whether based on contract, tort, statute, law, equity, or otherwise (including, but not limited to, federal and state securities laws), that Plaintiffs or any other Settlement Class Member: (1) asserted in the *Allegheny* Complaint or the *Munoz* Complaint; or (2) ever had, now have, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity that, in full or part, concern, relate to, arise out of, or are in any way connected to or based upon the allegations, transactions, facts, matters, occurrences, representations, or omissions involved, set forth, or referred to in the Complaints and that relate to the ownership of Common Stock during the Class Period, except claims with regard to enforcement of the Settlement and this Stipulation.[92]

[90] August 11 Opinion, 2023 WL 5165606, at *21.

[91] *Compare* Op. Br. at 20-26 *with* A476-A480.

[92] C855-C856.

Ms. Izzo argues that because the Release "extends to claims arising out of any 'facts, matters, occurrences, representations, or omissions involved, set forth, or referred to in the Complaints,'" it purports to release claims that relate in any conceivable way to any word or concept included in the Complaints, including "[d]erivative claims related to the Hycroft mine" or unnamed "similar investments," "[a]ny derivative challenge" to decisions concerning "the Company's long-term incentive plans," and "[a]ny securities lawsuit related to any SEC filing or even tweet by Adam Aron" that remotely relates to any fact in the Complaints.[93]

As the Court of Chancery correctly held, however, and as Ms. Izzo herself concedes, the Release is "subject to two conjunctive limitations:"[94] "(i) the claim must be 'connected to or based upon the allegations, transactions, facts, matters, occurrences, representations, or omissions involved, set forth, or referred to in the Complaints;' and (ii) the claim must 'relate to the ownership of' AMC equity 'during the Class Period.'"[95] These limitations cabin the scope of the Release to claims that arise out of the "operative facts" of the Action.[96] Despite Ms. Izzo's assertion to the

[93] Op. Br. at 22-23.

[94] July 21 Opinion, 299 A.3d at 534, n.186; Op. Br. at 21-22.

[95] July 21 Opinion, 299 A.3d at 534, n.186; C855-C856.

[96] *Phila. Stock Exch*, 945 A.2d at 1146 (quoting *UniSuper, Ltd. v. News Corp.*, 898 A.2d 344, 347 (Del. Ch. 2006)).

contrary, these limitations are not "porous"[97] but, instead, are meaningful guardrails that are consistent with Delaware precedent. The version of the Release that Ms. Izzo imagines is not in any court's power to grant, and the parties did not seek anything like it. Indeed, the language in the Release with which Ms. Izzo takes issue is commonly found in settlement releases approved by the Delaware courts.[98]

"[A] party funding a settlement reasonably can expect to put all claims relating to the subject matter of the litigation—real claims and theoretical claims—behind it."[99] Ms. Izzo has not—and cannot—explain why Defendants are not entitled to a

[97] Op. Br. at 22.

[98] Compare the scope of the Release to, *e.g.*, *Phila. Stock Exch.*, 945 A.2d at 1145-46 ("all claims . . . which have arisen, could have arisen, arise now, or may hereafter arise out of, or relate in any manner to the claims . . . involved, or set forth in, or referred to or otherwise related, directly or indirectly, in any way to, this Action or the subject matter of this Action[.]"); *CME Grp. Inc. v. Chi. Bd. Options Exch., Inc.*, 2009 WL 1547510, at *8, *11 (Del. Ch. June 3, 2009), Stipulation of Settlement, 2008 WL 7949542, (¶ 30Z) ("[a]ll claims … which have arisen, could have arisen, arise now, or may hereafter arise out of, or related in any manner to the claims, demands, assertions, allegations, facts, events, transactions, matters, acts, occurrences, statements, representations, misrepresentations, omissions . . . involved, or set forth in, or referred to or otherwise related, directly or indirectly, in any way to, this Action, or the subject matter of this Action[.]"); *In re Columbia Pipeline Grp., Inc. Merger Litig.*, C.A. No. 2018-0484-JTL (Del. Ch. June 1, 2022) (TRANSCRIPT) (C210-C329), Stipulation and Agreement of Compromise and Settlement at 14 Dkt. 323 (C170) (claims that "aris[e] out of or relat[e] to the allegations, transactions, facts, matters, representations, or omissions involved, set forth, or referred to in the Complaint.").

[99] *CME Grp.*, 2009 WL 1547510, at *8.

standard release of claims arising out of the subject matter of the Action. Tellingly, Ms. Izzo does not cite to a *single* authority where a court found a settlement release with language similar to the Release to be overbroad or otherwise run afoul of Delaware law.

2. The Release Does Not Cover Claims Arising From Future Conduct

Ms. Izzo also contends that that the Release "exceeds [the] limits" set by Delaware law because it "'release[s] claims based on a set of operative facts that will occur in the future.'"[100] The Court of Chancery twice correctly rejected this argument, holding that it constituted a "misinterpret[ation]" of the Release.[101]

The release at issue in *Griffith*[102]—the lone case upon which Ms. Izzo relies to contend that the Release here improperly covers claims based on future conduct—is not remotely comparable.[103] The proposed settlement in *Griffith* provided a release of claims related to "the amount of [Goldman Sachs'] non-employee director compensation to be paid or awarded pursuant to the 2021 SIP," where "payments under the 2021 SIP cover non-employee director compensation to be paid into 2024"

[100] Op. Br. at 24 (quoting *Griffith v. Stein*, 283 A.3d 1124, 1134, 1137 (Del. 2022)).

[101] August 11 Opinion, 2023 WL 5165606, at *42; July 21 Opinion, 299 A.3d at 534, n.186.

[102] *Griffith*, 283 A.3d at 1137.

[103] Op. Br. at 24.

and the "2021 SIP was not scheduled to be approved . . . until eight months after the settlement."[104] Such a release explicitly contemplates future events; the Release here does not.[105] Rather, the Release here explicitly only applies to claims that arise out of past conduct that could have been asserted in the Complaints.

Ms. Izzo's detailing of "future" events and imagination of hypothetical legal actions concerning such events are irrelevant. As a threshold matter, and as Ms. Izzo concedes, "[a] 'court conducting an action cannot predetermine the res judicata effect of the judgment; that effect can only be tested in a subsequent action.'"[106] The Court of Chancery was correct to agree and not indulge Ms. Izzo in providing advisory rulings on the effect of the Release on any yet-to-be asserted action.[107] Furthermore, Ms. Izzo's hypothetical legal actions, based on events that occurred between "the June 30 [S]ettlement [H]earing and August 24," ignore the two conjunctive limitations in the Release.[108] This Action plainly does not concern

---

[104] *Griffith*, 283 A.3d at 1135.

[105] *See* C841 (Report and Recommendation) ("The cases cited by Izzo undermine her argument, because in both *Unisuper* and *Griffith*, the releases expressly released claims for conduct that would occur in the future. That is not the case here.")

[106] Op. Br. at 26 (internal citation omitted).

[107] July 21 Opinion, 299 A.3d at 534, n.186; August 11 Opinion, 2023 WL 5165606, at *21.

[108] Op. Br. at 25.

Oppenheimer or *Barbie*, movies released well after the Complaints were filed, nor does it have anything to do with Taylor Swift.[109] That time "did not freeze" after the Settlement Hearing does not change the text of the Release, which applies only to claims based on past conduct and that arise out of the same operative facts as the Complaints.[110]

[109] *Id.*

[110] *Id.*

II. THE COURT OF CHANCERY CORRECTLY CERTIFIED THE SETTLEMENT CLASS AS A NON-OPT-OUT CLASS UNDER RULES 23(b)(1) AND (b)(2)

A. Question Presented

Did the Court of Chancery correctly certify the Class as a non-opt-out class under Court of Chancery Rules 23(b)(1) and (b)(2)?[111] This question was presented below at A271-A274, A329-A335, A420-A424, A483-A487; and C760-C761.

B. Standard Of Review

"Because the settlement class was certified under Court of Chancery Rules 23(b)(1) and (b)(2), any opt-out right was entirely a matter of judicial discretion. A challenge to a trial court decision to grant or deny an opt-out right under these rules is reviewed for abuse of discretion."[112]

[111] August 11 Opinion, 2023 WL 5165606, at *11-14.

[112] *Phila. Stock Exch.*, 945 A.2d at 1136-37; *see also Nottingham P'rs v. Dana*, 564 A.2d 1089, 1101 (Del. 1989) ("A decision by the Court of Chancery, to afford or deny an opt out right to a member of a class certified under [] Rule 23(b)(2), under circumstances like the ones presented in this case, is a discretionary one. Such a decision will be reversed by this Court only if it constitutes an abuse of discretion under the facts and circumstances which are presented.").

C. Merits Of The Argument

1. Ms. Izzo Does Not Dispute That The Class Was Properly Certified Under Rules 23(b)(1) And (b)(2)

The Court of Chancery certified this Action as a class action under Rules 23(b)(1) and (b)(2).[113] Ms. Izzo does not challenge that holding. For good reason.

Certification under Rule 23(b)(1) is appropriate where the case "involves 'one set of actions by defendants creating a uniform type of impact upon the class of stockholders,'" such as "actions challenging the exercise of corporate fiduciary duties."[114] Here, the Court of Chancery correctly found that the Class consisted of "unaffiliated holders of common stock," "challenging the same course of conduct," and alleging "the same harm" of "economic and franchise dilution," making certification under Rule 23(b)(1) appropriate.[115]

Certification under Rule 23(b)(2) is appropriate where the defendants' alleged misconduct is "generally applicable to the class," and the "rights and interests of the class members are homogeneous."[116] Rule 23(b)(2) certification is appropriate "even though the remedy may be [] monetary," where the "action was commenced

---

[113] August 11 Opinion, 2023 WL 5165606, at *11-14.

[114] *Id.* at *12 (quoting *Turner v. Bernstein*, 768 A.2d 24, 31 (Del. Ch. 2000)).

[115] *Id.*

[116] *Id.* (quoting *In re Celera Corp. S'holder Litig.*, 59 A.3d 418, 433 (Del. 2012)).

with a focus on injunctive or other equitable relief."[117] Here, Plaintiffs alleged a harm to the Class as a whole and commenced the Action with a "firm focus on injunctive relief."[118] As such, the Court of Chancery correctly held that certification under Rule 23(b)(2) was also appropriate.[119]

2. The Court Of Chancery Properly Determined Not To Provide The Class With A Discretionary Opt-Out Right

The Court of Chancery also correctly held that "[i]f a class is certified under Rule 23(b)(3), class members have an unqualified right to opt out of the class. There is no corresponding *mandatory* opt-out right for classes certified under Rule 23(b)(1) or (b)(2)."[120] Indeed, Delaware courts routinely certify non-opt-out classes under Rules 23(b)(1) and/or (b)(2) when approving settlements of putative class actions challenging corporate transactions, such as the Charter Proposals at issue in this Action.[121]

---

[117] *Id.* (quoting *CME Grp.*, 2009 WL 1547510, at *5).

[118] *Id.*

[119] *Id.*

[120] *Id.* at *13 (quoting *Celera*, 59 A.3d at 432) (emphasis in original).

[121] *Phila. Stock Exch.*, 945 A.2d at 1137 (affirming Court of Chancery decision not to grant an opt-out right under Rule 23(b)(2) where "the primary relief sought in the initial and amended complaints was equitable"); *Nottingham P'rs*, 564 A.2d at 1101 (affirming denial of an opt-out right to a Rule 23(b)(2) class in approving settlement of an action related to a stock recapitalization plan and certificate amendment); *Turberg v. ArcSight, Inc.*, 2011 WL 4445653, at *1 (Del. Ch. Sept. 20, 2011) (certifying non-opt-out class and approving class action settlement arising out of a

Citing *Celera*[122] and *Prezant v. De Angelis*[123]—the Delaware cases that Ms. Izzo relies on here and relied on below to argue for an opt-out right—the Court of Chancery correctly recognized the types of instances where this Court has determined "'discretionary opt-out rights should be granted.'"[124] The Court of Chancery then correctly distinguished *Celera* and *Prezant*, holding that "*Celera* is inapposite" and that Ms. Izzo "misinterprets *Prezant*."[125]

---

merger dispute); *In re Lawson Software, Inc. S'holder Litig.*, 2011 WL 2185613, at *1 (Del. Ch. May 27, 2011) ("Under either [Rule 23(b)(1) or (b)(2)], 'certification of a mandatory (i.e., non-opt-out) class is appropriate.'") (quoting, *CME Grp. Inc.*, 2009 WL 1547510, at *5); *In re Wm. Wrigley Jr. Co. S'holders Litig*., 2009 WL 154380, at *1, *4 (Del. Ch. Jan. 22, 2009) (certifying non-opt-out class and approving settlement arising out of a merger dispute over objections for opt-out rights); *Turner*, 768 A.2d at 34, n.29 ("as long as (1) the class fits within the rigorous requirements of Rule 23(b)(1); (2) there is adequate class notice; and (3) the other requirements of Rule 23 are satisfied, then sufficient guarantees of adequate representation and fairness exist so as to preclude the need for an opt-out mechanism"); *In re Straight Path Commc'ns Inc. Consol. S'holder Litig.*, 2022 WL 2236192, at *10 (Del. Ch. June 14, 2022) (finding that provision of an opt-out right in the context of class certification "would likely create a risk of inconsistent judgments"); *In re Ebix, Inc. S'holder Litig.*, 2018 WL 3570126, at *5 (Del. Ch. July 17, 2018) (certifying class without opt-out rights where plaintiffs sought rescission and cancellation of grants under several compensation plans).

[122] 59 A.3d 418 (Del. 2012).

[123] 636 A.2d 915 (Del. 1994).

[124] August 11 Opinion, 2023 WL 5165606, at *13 (quoting *Celera*, 59 A.3d at 435).

[125] *Id.*

In *Celera*, "the class representative was 'barely' adequate, [and] the objector was a significant shareholder prepared independently to prosecute a clearly identified and supportable claim for substantial money damages."[126] By contrast, AMC's stockholder base is vastly comprised of retail investors,[127] none of whom advanced claims for relief meaningfully distinct from other Class members. Ms. Izzo's suggestion that she and other stockholders were situated differently than Plaintiffs is not credible. Despite attempting to bury the inconvenient truth in her Opening Brief, if Ms. Izzo had her way, she would have sought an injunction, not monetary damages.[128] Putting aside that an injunction could have caused catastrophic harm to AMC, that is the exact same relief that Plaintiffs sought in the Action.

As for *Prezant*, Ms. Izzo incorrectly cites it, as she did below, for the proposition that because certain Class members do not "desire" the relief achieved, those Class members have been denied due process.[129] But as the Court of Chancery

---

[126] *Id.* (quoting *Celera*, 59 A.3d at 436).

[127] *See* C474, C498, C500-C501.

[128] *See* A447, A449, A468, A491 ("[A]n injunction . . . is the relief AMC stockholders deserve" and "[o]bjecting stockholders . . . want that permanent injunction.").

[129] Op. Br. at 30.

correctly held, "*Prezant* did not speak to any such numbers game."[130] The mere fact that the Settlement "drew a large volume of objections" speaks nothing of their merit, and "meritless objections do not demonstrate a disqualifying conflict."[131]

The Court of Chancery also correctly identified several practical reasons why an opt-out right would not have been feasible in this Action.[132]

An opt-out right would have required additional notice to the Class, and any opt-out right was unlikely to be meaningful given that AMC stockholder "procedural compliance ha[d] been a challenge in this case," and dissenting Class members would have had to accurately follow the noticed opt-out procedures.[133] Ms. Izzo's only response on this point is to argue that the Court of Chancery's reasoning "absolves the parties" of their "failure" to facilitate proper notice and settlement administration.[134] Ms. Izzo's conclusory aspersions fail to address—much less overcome—the Court of Chancery's extensive findings that notice to the Class in this Action was sufficient.[135]

---

[130] August 11 Opinion, 2023 WL 5165606, at *9 (citing *Prezant*, 636 A.2d at 924).

[131] *Id.*

[132] *Id.* at *14.

[133] *Id.*

[134] Op. Br. at 35-36.

[135] August 11 Opinion, 2023 WL 5165606, at *14-18.

The Court of Chancery also correctly held that "permitting an opt-out right would further delay the effective date, which . . . would be detrimental to AMC and the class's interests in it."[136] Ms. Izzo's only response on this point is to suggest other possible resolutions of this Action that were not before the Court of Chancery.[137] The Court of Chancery correctly viewed its charge as ruling on the parties' proposed Settlement, not coming up with its own proposed resolutions.

Tellingly, Ms. Izzo does not even address what the Court of Chancery described as its "fundamental[]" reason for certifying a non-opt out Class in this Action—namely, that this Action challenged Charter Proposals that changed the capital structure of AMC and, thus, the entire concept of an opt-out was a non-starter:

> If Plaintiffs had prevailed and the Court granted injunctive relief, the entire class would have benefitted from that relief. The Proposed Settlement releases those claims and allows the Reverse Split and the Conversion to go forward with stock consideration to each member of the class. It is impossible to split that bargain by permitting the Reverse Split and the Conversion to go forward, while excluding certain class members from the consideration and permitting them to maintain their claims against, and requests to enjoin, the Reverse Split and the Conversion.[138]

---

[136] *Id.* at *14.

[137] Op. Br. at 36.

[138] August 11 Opinion, 2023 WL 5165606, at *14.

That analysis is correct. This Action is precisely the type of action for which Rules 23(b)(1) and (b)(2) were designed, and the Court of Chancery certainly did not abuse its discretion when it denied the Class a discretionary opt-out right.

CONCLUSION

For all of these reasons, and those set forth in the Court of Chancery's well-reasoned August 11 Opinion, this Court should affirm the approval of the Settlement.

OF COUNSEL:

John A. Neuwirth
Joshua S. Amsel
Matthew S. Connors (#5598)
Tanner S. Stanley
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

/s/ Kevin M. Gallagher
Raymond J. DiCamillo (#3188)
Kevin M. Gallagher (#5337)
Matthew W. Murphy (#5938)
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 N. King Street
Wilmington, Delaware 19801
(302) 651-7700

Counsel for Defendants-Below/Appellees AMC Entertainment Holdings, Inc., Adam M. Aron, Denise Clark, Howard W. Koch, Kathleen M. Pawlus, Keri Putnam, Anthony J. Saich, Philip Lader, Gary F. Locke, Lee Wittlinger, and Adam J. Sussman

Dated: January 5, 2024